

*United States Court of Appeals
for the Second Circuit*



**BRIEF FOR
APPELLANT**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-7483

STANLEY V. TUCKER,

Plaintiff/APPELLANT

-v-

PAUL B. CRIKELAIR, ET AL.

Defendant/ Respondents

APPELLANT'S BRIEF

Appeal from the decision of the HON M. J. BLUMENFELD,
USDC-District of Connecticut of 20 September 1976 and to
this knowledge of Appellant this decision is not reported



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ORIGINAL

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ISSUES PRESENTED FOR REVIEW

1. Do the Connecticut General Statutes presented herein as unconstitutional violate the equal protection clause.
2. Did the Trial Court err in treating the issues of due process when the facts alleged in the complaint constituted an "equal Protection" challenge
3. Did the Trial Court usurp the responsibilities of a Three-Judge District Court
4. Was the Attorney General of Connecticut acting illegally appearing in this action

I. STATEMENT OF THE CASE

A. Background of Federal Litigation By Appellant

This Appellant is no stranger to due process and equal protection litigation in the federal courts. In 1970 vexed with a number of pre-judgment attachments levied on his property in Connecticut, some of which arose out of a fire in a building under construction, this Appellant filed his first action in the USDC-Connecticut, namely

Tucker v Maher, USDC-Conn 13,786, quickly followed by two other actions with the same constitutional challenge to the attachment laws of Connecticut. The USDC- Conn, the Same Judge Blumenfeld dismissed all three actions and

Tucker v Maher was taken on appeal and the dismissal upheld by the 2nd C. A., 441 F 2d 740, but the UNITED STATES SUPREME COURT reversed and remanded, 405 US 1052.

On remand hearing was had before a Three-Judge District court and three days after hearing but before decision was rendered former Governor Meskill signed into the law Public Act 73-431, Pre-Judgement Remedy Act, thus upholding this Appellant's constitutional claims but mooted his federal action. The Three-Judge Court then dismissed the damage claim on a "good faith" defense. On Appeal the 2nd C. A. upheld the dismissal, 497 F 2d 1309, with an enlightened opinion that documented the varied conflict between the Circuit Courts of Appeal as to validity for a "good faith" defense. The Supreme Court denied certiorari however in another action with the same issues involving the Kent State Student murders, Schaer v Rhodes 416 US 252, rejected the good faith defense to the extent that a trial on the merits was required where the actions were wanton and wilful.

Appellant in series of litigations in the USDC-Conn. challenged on constitutional grounds the "registration" of out of state liens without notice and / or hearing again the challenge was dismissed in the District Court, dismissal upheld by the 2nd C. A. but the need for filing a Petition for Certiorari was mooted by action of the Connecticut Legislature adopting the Uniform Recognition of Foreign Judgments Act, GS 52- 604 through 609.

Thus this Appellant appears before this Court once again as a constitutional litigant whose every challenge has been dismissed and denied in the District Court but whose every challenge has been vindicated or upheld by action of the United States Supreme Court and / or by the Connecticut State Legislature.

B. NATURE OF THE CASE

In this action Appellant seeks relief from threatened unconstitutional state law injuries brought by his former wife, his sister and her attorney based on California judgments rendered as "defaults" or without due process and registered as liens in violation of the laws and statutes of both Conn. and California. Because foreclosure is threatened Appellant seeks to challenge on equal protection principles Connecticut statutes that grant to a class of Plaintiff special privileges and deny to Defendants equal privileges to ensure that in a foreclosure Defendants suffer all losses and Plaintiffs as a class escape free. This unequal treatment by the state laws is being ruthlessly exploited by the Defendants who with single minded maliciousness threaten Appellant with "total ruin" by levying liens on all of his properties with many times the value of the lien in equity for the purpose of causing financial hardships, foreclosures, and their written goal of - "total financial ruin." Faced with this threat that continues since 1972 Appellant has taken to the federal courts to uphold his constitutional rights.

C. PROCEEDINGS IN LOWER COURT

On Sept 25th, 1975 Plaintiff filed his complaint in the District Court against his former wife, her sister and attorney and seeking declaratory relief as to the ~~statutes~~ against the proper official, the Chief Court Administrator for Connecticut, Courts, as to constitutionality of the statutes complained of.

On November 5th, 1975 Plaintiff moved for speedy designation of a Three-Judge District Court and on November 10th, 1975 filed his Supporting Brief.

The California Defendants filed a joint Answer and then

the Connecticut Attorney General, acting outside the scope or authority set up by the Connecticut Legislature in G. S. 3-125 appeared for the state officer defendant and filed an Answer and later without leave of court filed a Motion to Dismiss in violation of FRCP Rule 12b seven months too late. This Plaintiff promptly filed a motion to strike and an opposing brief. without ever holding a hearing as to the Motion For Designation of Three-Judge Court filed in November of 1975 in August of 1976 the lower court in a seven page memorandum seeking to treat the issues raised on due process grounds dismissed the complaint.

D. FACTS RELEVANT TO ISSUES ON APPEAL

Of importance to this appeal are the economic conditions of the times which start with an economic downswing in the United States economy starting in spring of 1974 and continuing unrelentingly with intense inflation in prices. As a result property prices in Connecticut peaked about 1972 when Respondents filed their liens and steadily dropped since. Foreclosures have rapidly risen until today they approach the 1929 peak. A property owner faced with liens cannot sell his property when prices are right and when foreclosure is permitted is faced with huge losses which under the creditor/plaintiff oriented statutes put the burden of the loss on the Defendant without any sharing of the loss on an equal basis by the Plaintiffs

ARGUMENT

II. THE DISMISSAL ON DUE PROCESS GROUNDS IGNORES THE EQUAL PROTECTION CASES UPHELD BY THE UNITED STATES SUPREME COURT

A. THE DISMISSAL IS CONTRARY TO THE SUBSTANTIAL FEDERAL QUESTION AS DEFINED BY THE UNITED STATES SUPREME COURT IN ITS RECENT LEADING DECISION ON USE OF PROPERTY TAXES TO FINANCE PUBLIC SCHOOLS IN TEXAS

The fact that equal protection principles can raise a substantial federal question where real estate is involved was dramatized in a recent leading case involving a challenge to use of real property taxes on equal protection basis to finance public schools in Texas. San Antonio School District v Rodriguez, 411 U.S. 1. The principles of that action are applicable herein (to refute the dismissal herein on "insubstantial basis"). The San Antonio supra action applied the "strict-judicial-scrutiny" test as to a definable category of "poor" persons discriminated against and also the question of whether the Texas system impinged on a fundamental "right".

Both of these two step tests Appellant submits are met in his challenge in this action. First the use of foreclosures is permitted by state law on "poor" people, people unable to meet the payment schedule or to pay off the mortgages or liens involved. Thus the class is quickly formulated and is obvious.

The next requirement is obvious from the Memorandum of decision Page H-5 "under this procedure the value of the property at the time of sale is to be determined by the price paid at the sale.... Cronin v Gager-Crawford Co 128 Conn 688. Thus a defendant too poor to pay his mortgage or lien in Connecticut has his property impounded by his creditors at a time of high value and some years later at the bottom of a depression the property

is foreclosed and sold at a low price that pays off the rich Plaintiff/Creditor but by the same process loses out the valuable equity to the poor Defendant. This very system strikes at the heart of a fundamental federally protected right - the right that no state can confiscate property for any purpose without adequate compensation.

5th Amendment : "nor shall private property be taken for public use without just compensation"

Under the statutes complained of the State of Connecticut under its laws on mortgages, liens and foreclosures seizes private property for a public purpose namely to satisfy creditors that are unpaid. This Appellant does not dispute the validity of the public purpose but protests that under the Connecticut system where the "value of the property at the time of the sale is to be determined by the price paid at the sale" Cronin v Gager-Crawford 128 Conn 688 forces huge losses on a suspect classification of person,, poor people in foreclosure actions, to benefit a suspect classification of persons, wealthy persons holding mortgages or liens.

Boddie v Conn 401 US 371 : "Our cases show that a statute may be held constitutionally invalid when it operates to deprive an individual of a protected right although its general validity is beyond question"

Boddie (Justice Brennan concurring) P 386: "An invidious discrimination based on poverty is adequate for this case"

In light of the above cases cited the opinion in the District Court that the "constitutional issues are insubstantial" appears to be clearly in error and in any event under the applicable law one that only a Three-Judge Court could make as it is a decision on the merits.

B. THE DISMISSAL IS CONTRARY TO THE DECISIONS OF THE U.S.
SUPREME COURT ON EQUAL ACCESS TO THE COURTS IN BODDIE
V CONNECTICUT 401 US 371 AND IN BELL V BURSON 402 US 535

In Bell v Burson, 402 US 535, 1971 the Supreme Court upheld on due process grounds the right to a meaningful hearing before an important right, the right to operate a motor vehicle is taken away. The significance of this decision is that it defines a meaningful hearing:

P 543: "The hearing must be "meaningful" Armonstrong v Manzo 380 US 545, and "appropriate to the nature of the case" Muliane v Central Hanover Bank 339 US at 313.

The hearing described in the Memorandum of Decision below H.- 6 does not meet this test. Instead it shows that the property impounded under lien is sold at a market value that is established by speculative conditions of the market at the time of the sale. Cronin v Gager-Crawford 128 Conn 688. The fact that in Conn the court may take evidence of value (Bryson v Newton 153 Conn 267) does not protect the foreclosure defendant from the losses inherent on the poor person being foreclosed by this system. This Appellant submits the very nature of the hearings held in the Connecticut system losses valuable property rights to the defendants as a class of suspect poor people being discriminated against by the State.

The question of the States legitimate interests in a particular question as contrasted to the indigents right to equal access to the courts (the heart of the complaint below) was adequately developed by the U. S. Supreme Court in a case arising from the District Courts of Connecticut.

Boddie v Conn. 401 U S 371 P 387: when a states interest in imposing a fee requirement on an indigent is compared to the indigent's interest in being heard, it is clear that the latter is the weightier."

While this Appellant could go much further in development

of unconstitutional deficiencies in the Conn. General Statutes complained of herein as unconstitutional and void the purpose of this point of argument is to shew the existance of a substantial federal question ---- not to prove that question in respect to each statute complained of now as that proof must by law be offered to a properly convened Three-Judge Tribunal.

28 USC 2284,

III. THE TRIAL COURT USURPED THE RESPONSIBILITIES OF A THREE-JUDGE DISTRICT COURT

A reading of the Memorandum of Decision leaves no doubt but that the Trial Court attempted to make a decision on the merits and one made in August of 1976 without ever permitting a hearing on the Petition for A Three-Judge Court filed in November a year before.

Surely if the district judge had to deliberate almost a full year then a "substantial federal question" was in his mind during that year.

However Title 28 USC 2284 would indicate that the District Court failed in a vital duty.

Title 28 USC 2284: The District Judge.. shall immediately notify the Chief Judge of the circuit, who shall designate two other judges.... to hear and determine the action"

Obviously this requirement was not met where the Petition for Three Judge Court file^d in Nov 1975 was never acted on but instead almost one year later the action was dismissed.

" three-judge court had jurisdiction to decide a complaint.....and a single judge court had no jurisdiction.."

Idlewild Bon Voyage Liquor v Rohan 289 F 2d 426

The district court's reliance on Buck v Morris Park 153 Conn 290 is obviously misplaced as that action only dealt with a lack of hearing on appraisal of property. In this

action the primary thrust of the complaint is not a lack of a hearing but the total discrimination against the poor as a class suffering all losses under state foreclosure laws that are heavily oriented to favor the creditor/rich as a class. A careful examination of the statutes at issue and the memorandum clearly show that the poor debtor whose property is liened and later foreclosed under time of economic hardship must suffer the entire loss and there is no means of escape . The very case cited by the District Court makes this most clear.

"the value of the property at the time of the sale is taken as the price paid at the sale"

Cronin v Gager-Crawford Co 128 Conn 267

IV. THE ATTORNEY GENERAL WAS APPEARING ILLEGALLY IN THIS ACTION AND HIS PLEADINGS SHOULD BE STRICKEN

The very appearance of the Attorney General in many, many cases in Connecticut outside of his statutory authority as set forth in G. S. 3-125 creates a most vexing problem for the litigant . First the appearance of the attorney general or his staff creates an immediate impression on the court that the awful sovereign power of the state is at stake even though that action might be directed at some misdeeds by an official wantonly and willfully carried out in violation of his statutory duties. By appearance of the Attorney General the District Court is overly impressed with the position of the state and will invariably provide an "immunity" where none is permitted by law.

G. S. 3-125 "Duties of Attorney General: "He shall appear for the State, the governor... heads of departments....and for the State Librarian.."

The defendant herein, state officer, CHIEF COURT ADMINISTRATOR FOR CONNECTICUT, is not among the chosen by the legislature to be defended as the post is purely administrative and if

statutory duties are neglected a proper person to be sued for declaratory relief as in this action. See complaint

Para 10 Appendix A-4 "....Declaratory relief and injunctive relief is directed at Defendant, John P. Cotter, because it is believed due to his position as CHIEF COURT ADMINISTRATOR that he is the proper person and proper STATE OFFICER to whom such relief should be directed"

Re-reading the allegations of the complaint it is affirmed that complaint is made that the California defendants "have a "dark and sinister motive..... to bring about a holocaust of foreclosures". It is not claimed in the complaint that the State of Connecticut is party to this improper motive nor is it claimed that the State of Conn. is liable in any way in damages. Why therefore did the Attorney General appear in this action? Why did he violate the express limits in G. S. 3-125? Why was the District Court impressed with his pleadings if not because he represents in fact and in law (GS 3-125 the official actions and agencies of the State). By the very appearance of the Attorney General an aura is somehow created that the State is on the defense, when in fact it is not, and the result is a gross leaning on the part of the District Court in the direction of the attorney general's pleadings.

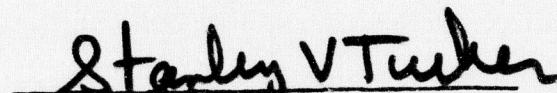
This Honorable Court is requested in its memorandum to direct the lower court to disregard the pleadings of the Attorney General unless and until pleadings are filed that place a demand upon the state and / or a demand for monetary relief is made or a showing made that the State has some special purpose (other than creditor abuses) in the statutes challenged. -10-

V. CONCLUSION

This Court is requested to make its finding that a Substantial Federal Question exists in that the challenged statutes confiscate private property without compensation under the current on-going three year recession and further creates an videous discrimination against a suspect classification of the poor and in favor of a suspect classification of the wealthy. A remand is requested to speedily convene a Three-Judge District Court pursuant to 28 USC 2284 so that a hearing may be had and evidence taken to resolve the constitutional challenges herein.

Further specific direction to the district court is requested to clarify under what conditions as limited by GS. 3-125 and as interpreted by this Honorable Court the Attorney General may properly appear so that the powerful shadow of the State of Connecticut does not appear where it does create an "illusion" that the State in some mysterious manner is involved and is defending where in fact the complaint is directed at abuses and unconstitutional deficiencies in creditor oriented statutes.

RESPECTFULLY SUBMITTED


STANLEY V. TUCKER
APPELLANT

AFFIDAVIT OF SERVICE BY MAIL

I, STANLEY V. TUCKER, hereby certify that on this 2nd of December 1976 I served the Brief and Appendix herein on the Respondents herein by depositing a true copy thereof in the U. S. mails at Hartford, Conn postage prepaid addressed:

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